

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

DANTE WALKER,)
Petitioner,)
v.) **09 CH 50842**
JODY P. WEIS, Superintendent of the)
Chicago Police Department, and)
POLICE BOARD OF THE CITY)
OF CHICAGO,)
Respondents.)

MEMORANDUM OPINION AND ORDER

This case is before the Court on Petitioner Dante Walker's Complaint for Administrative Review. For the reasons set forth below, the petition is granted in part and denied in part.

FACTS

Petitioner Dante Walker ("Walker") has been a Chicago Police Department (the "Department") employee since May 1993. During the relevant time period he was assigned as a security guard in the 9th District. On March 6, 2009, Respondent Superintendent Jody P. Weis filed charges against Walker with the Police Board of the City of the Chicago (the "Board"). The charges asserted that Walker violated several of the Department's Rules and Regulations (the "Rules"). Specifically, Walker allegedly violated the following Rules:

Rule 2: Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department.

Rule 4: Any conduct or action taken to use the official position for personal gain or influence.

Rule 14: Making a false report, written or oral.

Rule 47: Associating or fraternizing with any person known to have been convicted of any felony or misdemeanor, either State or Federal, excluding traffic and municipal ordinance violations.

The charges against Walker stem from his undisputed relationship with Nadia Smith (“Smith”), which began in 2004. In November 2004, Smith and her five children moved in with Walker. According to Walker, one son refers to Walker as his father. The charges alleged that on February 23, 2006, Walker used his official position for his own personal gain by using his Department-issued ID to access Smith’s arrestee report or criminal history report. Walker allegedly learned that Smith had been convicted of felony in November 1995, and she was currently on parole for a separate conviction. She had been paroled since July 2004. Despite this knowledge, he allegedly continued his relationship with Smith in violation of the Rules. Further, Walker allegedly provided false statements to the Independent Police Review Authority on July 6, 2007 when he denied that he knew Smith was a convicted felon. According to Walker, he did not learn of Smith’s criminal record until he gave a statement to the Internal Affairs Division after he had Smith arrested for domestic battery in May 2006.

A hearing was conducted over the course of four days in 2009: August 13th, September 11th, October 1st and October 21st. On November 19, 2009, the Board issued a decision finding Walker guilty of all charges and finding that cause existed to discharge Walker from his position as a police officer with the Department. Walker now seeks administrative review of the Board’s decision. He contends that the Board’s findings are against the manifest weight of the evidence. In the event that this Court concludes that the Board’s decision is not against the manifest weight of the evidence, Walker contends that the decision to discharge him is excessive, arbitrary and contrary to the requirements of service.

DISCUSSION

I. Whether the Board’s Decision is Against the Manifest Weight of the Evidence

Administrative review is limited to the record. *Abrahamson v. Illinois Dep’t of Prof. Regulation*, 153 Ill.2d 76, 88 (1992). A court should not reweigh the evidence or make independent determinations of fact, but only determine whether the findings are against the manifest weight of the evidence *Id.* “An administrative agency decision is against the manifest weight of the evidence only if the opposite conclusion is clearly evident.” *Id.* The mere fact that another conclusion is reasonable or the reviewing court would have ruled differently does not justify reversal. *Id.* As long as the record contains evidence to support the agency’s findings, its decision should be affirmed. *Id.*

In arguing that the Board’s decision is against the manifest weight of the evidence, Walker focuses on the finding that he used the Department’s system to access Smith’s arrest history. That is because all of the Board’s other findings depend on this fact. The Department uses a CLEAR system that employees can use to access and obtain arrest histories. According to Walker, the evidence that he used his ID to access Smith’s arrest history was discredited at the hearing to the extent that the Board’s acceptance of that evidence was against the manifest weight of the evidence.

Walker asserts that it is undisputed that he was assigned as a security guard at a police building at 3900 South California (the “Building”) on February 23, 2006 – the night that he allegedly accessed Smith’s records. (R. p. 251-52, Testimony of Sergeant Loughney). At that time, the building was being rehabbed to make it the juvenile intervention center. (*Id.*) The purpose of assigning security to that building was so that it didn’t get broken into as there had been several break-ins where construction material was stolen. (R. at 255). Walker testified that he was gone long before the building was up and running, and there was no activity going on there. (R. at 209). He agreed with the Hearing Officer that his defense was that he was on his shift at the time Smith’s arrest history was accessed, the Building was empty and he did not have access to any computer on that day. Walker contends that this testimony is un-contradicted and un-impeached, and that the Board improperly disregarded his testimony. According to Walker, there was no evidence that he had access to the CLEAR system at the relevant time.

Walker acknowledges that his supervisor, Sergeant Loughney, testified that there were two computers at the front desk of the Building, and that he thought there were some others in the building. (R. at 256). He further testified that in February 2006 the computers would have been operational because he believed the building opened in March. (*Id.*) He also remembered that the computers were installed and up and running long before the building was open to the public. (R. at 257). Walker, however, discounts this testimony because Sergeant Loughney also testified that while he could have sworn policemen were working in the Building in March 2006, he was not a hundred percent sure. (R. p. 258). He was also not sure when the Building was dedicated. (R. p. 257-58). Nor did Sergeant Loughney check records to determine when the computers were installed. (R. p. 257). Finally, Walker cites Sergeant Loughney’s testimony that officers brought DVD players, TVs and computers to the Building. (R. at 255-56). He contends that it is not logical that the officers would have brought computers if there were already computers at the Building. With respect to his ability to access the CLEAR system at another location during his shift on February 23, 2006, Walker states that Sergeant Loughney testified that the sergeants would periodically check on the officers assigned to the Building to make sure that they were there. Thus, Walker asserts that it is unlikely that he would have the opportunity to leave his post, particularly when there was no evidence that there were other police stations near the Building.

Walker also argues that the evidence does not support a finding that he accessed data showing that the arrest history belonged to Smith or that Smith is a convicted felon. It is undisputed that a Department print-out shows that someone using Walker’s login ID accessed an arrest history on February 23, 2006. (City Ex. 4). Walker points to the testimony of Zhihong Zhang (“Zhang”), manager of Police Systems Support. Zhang testified that the print-out shows that Walker queried the arrest history for IR number 1128074. (R. at 32). He also searched and printed an arrest report for arrest ID 12949349. (*Id.*) (See City Ex. 6). Walker notes that while the City’s Ex. 6 shows three arrests for a person with IR No. 1128074, it does not provide the name of the arrestee or the outcome of the arrest.¹

¹ Walker is incorrect that Ex. 6 does not provide Smith’s name. It provides the name of Nadia Smith and her alias, Breanna Smith.

Next, Walker states that while the print-out (i.e. Ex. 4) shows that someone using his ID performed an arrest search/print on February 23, 2006 for ID 12949349, Zhang testified that such report resembled the City's Ex. 3. (R. p. 40). The City's Ex. 3 provides that it is a criminal history report for Breanna Smith, Smith's daughter, and shows that Nadia Smith is an alias. It shows Smith's IR number, arrests, felony conviction and parole status, but the arrest ID number listed on the print out with respect to the February 23, 2006 query – i.e. 12949349 – does not appear anywhere on Ex. 3.² Nor does Ex. 3 pertain to a specific arrest - it lists Smith's entire criminal history. Thus, Walker contends that there is no evidence linking the usage report for his ID number to the Criminal History Report showing Smith's felony conviction. According to Walker, the City's Ex. 7 further supports his position. Exhibit 7 shows personnel who accessed IR No. 1128074. That report only shows that Walker's ID viewed the arrestee history for that IR number, and such history dose not show Smith's felony conviction. (*See* City Ex. 6).

The City explains the Department's records system somewhat more thoroughly by citing to Zhang's testimony. As part of his job, Zhang helps the Data Warehouse Group, which develops warehouse reports, performs the query reports and houses employee information. They also run usage reports, which include whether a Department employee has used or obtained information in the system. (R. at 26-27; *See e.g.* City Ex. 4). Zhang testified that when an officer is assigned an ID number, it stays with him/her throughout his/her career. Even after he/she retires, the ID is never used by anyone else. (R. at 28-29). Walker's ID is PCOE438 – although there appears to be no dispute that Walker's ID is the one listed as accessing Smith's information. An officer must keep his/her password secret so that no other officer may use it. (R. at 176).

Zhang further explained that an IR number identifies an individual person and is drawn from the individual's fingerprint. (R. at 83). If that person has multiple arrests, each arrest will have its own ID. (R. at 34). The IR No. 1128074 uniquely identifies the person shown on Ex. 3. (R. at 47). Arrest No. 12949349 is the second arrest for the person with IR No. 1128074. (R. at 34). Zhang also testified that a criminal history report – such as Ex. 3 – lists as much information as the department has on an individual. (R. at 82). For example, they list all aliases the person uses and individual characteristics. (R. at 82-83). Walker also acknowledged that Ex. 3, Criminal History Report, showed the picture of his ex-girlfriend Smith, it contained the IR No. 1128074, "Convicted Felon" appeared at the top right of that Report and it showed that she was paroled. (R. at 21-22).

According to Zhang, City Ex. 4 – as discussed above – demonstrates that Walker first queried the arrest history of IR No. 1128074. This report specifically names Nadia Smith. Then, one minute later, Walker searched and printed out an arrest report for arrest No.12949349. (R. at 32). Exhibit 6 – the arrest history for IR No. 1128074 - contains arrest No. 12949349. Thus, Zhang testifeid that Walker clicked on that specific arrest after pulling up the arrest history for IR No. 1128074. (R. at 33). The Department also

² Walker's brief says Exhibit 6, but the only logical conclusion is that he meant to reference Exhibit 3.

cross-referenced the Usage Report for Walker's ID (Ex. 4) with the Usage Report for Smith's Arrest History – IR No. 1128074 - which is City Ex. 7. Exhibit 7 shows all officers who accessed Smith's information and confirms that Walker viewed Smith's arrest history. (*See e.g.* pp. 42-43).

Respondents also refer to the following testimony in arguing that the evidence shows that Walker could have accessed the CLEAR system on the night in question. Walker testified that on February 23, 2006, he requested and received two hours of comp time. (R. at 19-20). Zhang testified that the CLEAR system is an internet application, and you can access the system anywhere that you have internet. (R. at 64). Respondents point out that Sergeant Loughney testified that the officers at the Building could pretty much do whatever they wanted.

Finally, with respect to the allegations that Walker violated Department Rules by making a false report, Respondents refer to the testimony of Alice Chico ('Chico'), an investigator with the Independent Police Review Authority. Chico testified that she interviewed Walker on July 7, 2006 regarding the charges against him. During the interview, Walker denied knowing that Smith was a convicted felon. He also denied using his official position to obtain Smith's criminal history report or arrestee history. Walker then signed his statement as correct. (R. at 100, 102-05). The Board concluded that this was a false report because they believed the evidence suggested otherwise.

Based on this evidence, Respondents argue that the Board's decision was not against the manifest weight of the evidence. They assert that the Board had evidence that Walker lived with Smith, that Smith's IR No. was 1128074 and that an IR No. is unique to one individual. Smith's Criminal History Report (Ex. 3) show that she was a convicted felon and on parole. Both Exhibits 4 and 7 show that Walker (or someone using his ID) accessed Smith's arrest history. Exhibit 6 shows all of Smith's arrests, one of which was printed using Walker's ID. In addition to containing arrest No. 12949349, Ex. 6 also shows the corresponding CB No. for that arrest – 15179717. While the specific arrest number does not appear on Ex. 3, the corresponding CB No. does. Respondents argue that the Board "rightfully relied upon documents that are regularly maintained and relied upon by the Department when executing its mission of fighting crime." They assert that "[t]o not find these documents reliable is tantamount to considering the Department's crime fighting tools and techniques unreliable."

According to Respondents, the Board was correct in choosing not to rely on Walker's less credible testimony. While Walker contends that someone else may have used his ID, he signed a sworn affidavit agreeing to maintain the secrecy of his ID. (*See e.g.* City, Ex. 14). Moreover, the reports accessed using Walker's ID pertained to his live-in girlfriend. Walker did not present any evidence suggesting that any other employee would have an interest in accessing such information. Therefore, Respondents contend that it would be illogical for the Board to find such an explanation credible. Additionally, Respondents dispute that Walkers testimony that the Building was empty on February 23, 2006 is un-contradicted. Rather, they contend that Sergeant Loughney adequately rebutted Walker's position by testifying that the computers in the Building

were operational. When the Building was dedicated or opened to the public is irrelevant. In any event, there was testimony that anyone with access to the internet could access the CLEAR system. Thus, it is not crucial that the Building had computers with internet access.

It is undisputed that the Department Records – i.e. City Exhibits 4 and 7 – show that someone using Walker’s Login ID accessed the arrestee history for IR No. 1128074 and did an arrest search/print for arrest ID 12949349 on February 23, 2006. Walker admits that it is Smith’s picture in Ex. 3, the Criminal History Report for IR No. 1128074. The arrestee history with that number also references Smith. Thus, the Board had evidence that the unique IR No. 1128074 pertained to Smith. Walker denied ever accessing Smith’s arrest history and that he had access to the CLEAR system on the night in question. His primary argument appears to be that the Building that he was assigned to was empty, he did not have access to a computer and thus, someone else must have used his ID to access Smith’s information. As Respondents point out, there is no evidence that anyone else had Walker’s ID and password or that anyone else had an interest in accessing Smith’s information.

Further, Walker’s arguments that officers would not have brought computers to the Building if they were already present and that it is unlikely Walker could have abandoned his post to access a computer at another location are mere speculation. Sergeant Loughney testified that there were two computers at the front desk. It is just as likely that even if those computers were operational, officers would have brought their own computers either because there were not enough computers in the Building for everyone, or they wanted to have their own computers with them – for example, to watch DVDs at their post. It is also unclear from the record where other Department locations were located or how often sergeants checked in on the officers other than “periodically”. Thus, it is also speculation that Walker would not have time to leave his post to access a computer if the ones in the Building were not operational. It should also be kept in mind that Walker received two hours of comp time that night. In any event, the evidence indicates that the CLEAR system is web-based. Thus, Walker just needed internet access, not another Department location. Even the personal computers that officers brought could have had a wireless internet connection – this conclusion is equally as likely as Walker’s theory.

As discussed above, Walker discounts Sergeant Loughney’s testimony because he did not check records to determine when the computers at the Building were installed, he did not remember exactly when the building was dedicated, and he was not one hundred percent sure that policemen were working out of the Building in March 2006. Sergeant Loughney did testify, however, that the computers at the front desk were operating in February because the building opened in March and the computers were installed and operational long before the building opened to the public. Respondents correctly point out that the date that the Building was actually dedicated is not relevant. Although Sergeant Loughney was not completely sure when the Building opened, he “could have sworn” that it was in March 2006. Though Sergeant Loughney was not 100% sure, his testimony nevertheless suggests that he was fairly confident that the computers were

operational in the Building on the date in question. It cannot be said that Walker's testimony that he had no computer access was completely uncontradicted. The Board saw the witnesses testify, and it was up to the Board members to weigh credibility. Moreover, Walker could have used any computer with internet, not just those in the Building. It cannot be said that it is clearly evident that it was someone other than Walker who accessed Smith's arrest information on February 23, 2006. This is particularly true where Walker presented no evidence of who that person may be or any motive he/she may have had for accessing Smith's information.

Thus, the Board's conclusion that Walker accessed Smith's arrest history is not against the manifest weight of the evidence. Necessarily, then, is its conclusion that Walker made a false report in stating that he never accessed Smith's arrest history during their relationship or at any other time is also not against the manifest weight of the evidence. (R. at 103). By itself, however, the fact that Walker accessed Smith's arrest history does not mean that he knew she was a convicted felon during their relationship. As Walker points out, Exhibit 6, the arrestee history, does not indicate that Smith was convicted of a felony, only that she was arrested. The only Exhibit that indicates that Smith was a convicted felon and on parole is Exhibit 3 – i.e. the Criminal History Report. Whether Walker actually accessed this document is a more difficult issue and was a point of confusion even for the Hearing Officer.

The Hearing Officer questioned Zhang's testimony that Walker clicked on and printed a particular arrest within the arrestee report (City Ex. 6) for Smith – i.e. the arrest search/print on Ex. 4 – and that document would have resembled Exhibit 3. Specifically, the Hearing Officer did not understand how clicking on a particular arrest within the arrestee report would have taken Walker to the Criminal History Report, which includes not only the arrest clicked on but all other arrests as well. (R. at 46-47). In response, Zhang first testified that clicking on a particular arrest would print a report for that specific arrest. (R. at 7). When questioned why Ex. 3 then included information for all arrests, Zhang asked to see the document. (*Id.*) The testimony continued as follows:

Zhang: Actually, it is that, and even though we look at the case and the arrest report will show all the arrests by the time we run the report, that's why it's the same.

Hearing Officer: You are saying if you click on the particular arrest, 12949349, which is one of the three arrests that this person had, okay, you would get flipped up a screen that includes all of her arrests? Is that what you are saying?

Zhang: I am not very sure, I should say, because I don't remember that much detail. But from my recollection, it is like that, it is just like I said, when you click one – even though one particular arrest, it will show all the arrests, yes. I am not a hundred percent sure of that because I haven't used the system for a while. (R. at 48)

Based on the Parties' briefs, this appears to be the only direct evidence that Walker viewed Smith's Criminal History Report. Zhang's testimony seems to contradict itself, however. First he testified that clicking on an arrest would print the information for that particular arrest. Then, after the Hearing Officer questioned why Ex. 3 contained all arrests, he changed his mind and said that clicking on a particular arrest would print the complete criminal history for an IR number. Even on this point, however, Zhang admitted that he was not very sure and didn't remember much detail. Respondents' brief does not attempt to explain how clicking on a particular arrest would print Smith's entire criminal history. Nor is this a logical inference. If that were the case, one would reach the exact same document no matter what arrest he/she clicked on. Further, Exhibit 4 indicates that Walker printed an arrest search, not a Criminal History Report. There is insufficient evidence in the record to support the conclusion that Walker viewed Smith's Criminal History Report – the only document that indicates she was a convicted felon and on parole. As there is not sufficient evidence to support that Walker knew Smith was a felon at the time of their relationship, it was also against the manifest weight of the evidence for the Board to conclude that Walker fraternized with a person known to have been convicted of a felony. And it follows that, though the Board could find that Walker made a false report about accessing Smith's arrest record, the Board could not properly find that Walker made a false report about not knowing Smith was a felon during their relationship.

II. Whether the Board's Decision to Discharge Walker Should be Reversed

Walker also argues that the Board's decision to discharge him from his position as a police officer was excessive, arbitrary and contrary to the requirements of the service. A reviewing court must determine whether cause existed to discharge the petitioner.

Launius v. Bd. of Fire and Police Comm'rs of the City of Des Plaines, 151 Ill.2d 419, 435 (1992). "Cause" is defined as "some substantial shortcoming which renders [the employee's] continuance in his office or employment in some way detrimental to the discipline and efficiency of the service and something which the law and a sound public opinion recognize as a good cause for his [discharge]." *Id.* The Board's determination with respect to cause should only be overturned if it is "arbitrary and unreasonable or unrelated to the requirements of the service." *Id.*

This Court must consider whether discharge is appropriate under that standard, based only on the Board's findings that Walker 1) used his official position to access Smith's Arrestee History Report for personal gain and 2) made false statements to Chico by denying that he obtained the Arrestee History Report. The Board's other findings -- that Walker knew that Smith was a convicted felon during their relationship, lied about knowing this and continued his relationship with her -- should not be taken into account as they are against the manifest weight of the evidence and must be set aside.

Walker states that there is no similar case with which to compare penalties imposed on police officers. He correctly asserts, however, that case law shows a willingness to reverse decisions to discharge officers where the penalty is excessive in

relation to the misconduct. A few examples are as follows: In *Massingale v. Police Board. of the City of Chicago*, the court determined that discharging a police officer of seven years because she drove intoxicated while not on duty was harsh and a serious deprivation to impose on the officer. 140 Ill.App.3d 378, 382 (1st Dist. 1986). Thus, it remanded the case so that an alternative sanction could be considered. *Id.* The court in *Washington v. Civil Service Commission* held that a five day suspension was more appropriate than a month-long suspension when plaintiff solicited sex from someone he had arrested. 98 Ill.App.3d 49, 57 (1st Dist. 1981) (disapproved on other grounds). In *Huff v. Rock Island County Sheriff's Merit Commission*, the court held that while an inability to perform ministerial tasks such as filing documentation indicated that plaintiff could no longer serve as a sergeant, it did not warrant termination. 294 Ill.App.3d 477, 484 (3d Dist. 1998).

Additionally, Walker argues that the decision to discharge him was arbitrary, unreasonable and unrelated to the requirements of service. He asserts that if he did access Smith's criminal record, he most likely did it because he had suspicions that he wanted to confirm or dispel. He contends that it is unfair to penalize him from using the CLEAR system to learn whether he was violating the Rule against fraternizing with convicted felons. In other words, the Department should not prohibit officers from using the best tool to determine whether someone has been convicted of a felony or misdemeanor.³

Walker next argues that even if he learned of Smith's felony conviction on February 23, 2006, he ended his relationship with her two and a half months later. He contends that one should not be expected to get out of a two year live-in relationship the moment he/she learns of a felony conviction, especially when children are involved. Finally, Walker asserts that there is no evidence that his relationship brought any disrepute to the Department or harmed any member of the Department or public. He argues that continuing to live with Smith for two and a half months was a lapse in judgment at most, and it does not warrant terminating a sixteen year career. Thus, Walker concludes that a suspension is adequate.

Respondents argue that Walker relies on cases decided prior to *Launius*, and such cases do not use the current standard. Specifically, while those cases examined whether the Board's decision was excessive or harsh, courts now look to whether the sanction was arbitrary, unreasonable or unrelated to the requirements of service. Respondents assert that although the evidence suggests that Walker knew Smith was a convicted felon on February 23, 2006 when he used his official position for personal gain, he continued to live with her until May 2006. Moreover, he lied about this in an official investigation. Respondents argue when a sworn member acts in a manner contradictory to the Department's mission, there is just cause for discharge. Respondents further assert that Walker's argument that he had suspicions regarding Smith was never raised at the hearing and is therefore waived. *Lebajo v. Dept. of Pub. Aid*, 210 Ill.App.3d 263, 268 (1st

³ These arguments cannot comfortably co-exist with Walker's insistence that he did *not* know Smith was a felon during their relationship. In effect, then, his reliance on these arguments would have to begin by conceding that he made a false report on that point.

Dist. 1991). Nor did Walker present any evidence regarding his need to continue to support Smith's children.

While Respondents assert that Walker's cases use an outdated standard of review, the standard cited in those cases appears to be the same as that set forth in *Launius*. See e.g. *Massingale*, 140 Ill.App.3d at 381. Notably, in describing the appropriate standard of review, the court in *Launius* referenced all cases that were decided prior to *Massingale*. Thus, the *Launius* court did not set forth a new standard of review rendering prior decisions irrelevant to this analysis. Respondents also point out that the court in *Massingale* overturned the discharge despite finding that the *charges* were not unreasonable or arbitrary, because the *sanction* was too harsh. The *Massingale* court, however, did not state that the board's finding that *cause* existed for discharge was not unreasonable or arbitrary. Rather, it appears that the court found that such finding was unreasonable as it was harsh and a serious deprivation in relation to the charges. See 140 Ill.App.3d at 382. It cannot be said that the cases cited by Walker have no precedential value.

Respondents argument that cause exists for Walker's discharge centers largely on its findings that he learned that Smith was a convicted felon, continued his relationship despite that, and lied about his knowledge. As discussed above, however, this Court concludes that all three of those findings must be set aside.

Respondents rely primarily, if not entirely, on *Launius*. In that case, plaintiff left his post after being told not to do so, stating he thought his family was in danger due to flooding. 151 Ill.2d at 423-24. The evidence showed that this was during a state of emergency due to severe flooding. *Id.* at 428, 430. In considering the board's decision to discharge plaintiff, the court considered that it is fundamental to the needs of service for a police officer to stay at his post when told to; the rain had stopped before plaintiff reached his house; he learned that his family was not in danger by 11 a.m. yet failed to return to his shift that ended at 3 p.m.; and he was out of contact for a 12-hour period. *Id.* at 437-38, 443. It held that a police officer may not choose whether or not to perform his duties, and it is his primary duty to protect the lives and property of citizens. *Id.* at 444-45. Thus, the discharge decision was related to the needs of service and neither arbitrary nor unreasonable. *Id.* at 445.

Launius is different than this case in which the evidence only shows that Walker, a sixteen-year veteran officer, accessed arrestee history on one occasion and was dishonest about that one occasion. While Walker's incident of dishonesty does undercut his integrity – an important matter to the Department – it seems a lapse less serious than failing to protect the lives of citizens during a city-wide emergency. While Walker should not have accessed Smith's information and lied about it, it is unclear how he got any personal benefit from it. His conduct is also arguably less drastic than soliciting sex from someone who has just been arrested or driving intoxicated (albeit off-duty). It is significant that this was a one-time offense. Respondents do not argue that Walker committed any other offenses during the course of his sixteen year career at the Department. Mitigating factors such as the foregoing should be taken into consideration.

See e.g. Launius, 151 Ill.2d at 436; *Massingale*, 140 Ill.App.3d at 382. Based on these facts, it cannot be said that Walker's conduct evidenced such a substantial shortcoming that his continued employment would be detrimental to the Department.

Accordingly, it is hereby ORDERED as follows:

1. The Board's findings with regard to Walker's knowledge that Smith was a convicted felon during their relationship (Count IV), and Walker's false statement about that (Count II), are set aside as against the manifest weight of the evidence.
2. The Board's other findings of violations are affirmed.
3. In view of the foregoing, the Board's imposition of discharge as a sanction is vacated, and this case is remanded so that the Board may determine an alternative sanction.

DATED: October 13, 2010

ENTER:

Circuit Judge

